IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.10.2006

(1) C.W.P. No.1774 of 1988

M/s Sheo Chand Rai Roshan Lal and others

v.

The State of Haryana and others

(2)C.W.P.No.1957 of 1988

M/s Kirori Mal Banarsi Dass

v.

The State of Haryana and others

Present: Mr.S.D.Bansal, Advocate for the petitioners in C.W.P.No.1774 of 1988.

None for the respondents.

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CORAM:

Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

This order shall dispose of the above-mentioned two writ petitions, as common questions of law and facts are involved in both the petitions, However, for the sake of reference, facts have been taken from C.W.P. No.1774 of 1988.

The prayer of the petitioners in the present petition is for issuance of a writ directing the respondents to determine the extent of the petitioners having passed on the burden of market fee before resorting to the recovery of fee already refunded to them. To substantiate the prayer, learned counsel has relied on order

dated 29.7.1987, passed by this Court in C.W.P. No.5137 of 1986.

A perusal of the facts, as stated in the petition, shows that the rate of market fee was enhanced from 2% to 3%, which was struck down by Hon'ble the Supreme Court in Kewal Krishan Puri and other v. State of Punjab and others, AIR 1980 SC 1008. In terms of the judgment, the petitioners in that case became entitled to the refund of the amount of market fee deposited by them in excess of 2% during the period, the enhanced rate of market fee remained in force. Thereafter, the State inserted Section 23-A in the Punjab Agricultural Produce Markets Act, 1961 providing for presumption of the burden of fee on the next purchaser unless otherwise proved and also inserted a validation clause. Challenge to the validation clause was negated by Hon'ble the Supreme Court in Writ Petition No. 1421 of 1980-- M/s Buraikia Dal Mills and Ors. v. State of Haryana and others, decided on 3.12.1985. Thereafter, notice dated 3.9.1986 was issued to one of the petitioners intimating him that amount of Rs. 44,038.94, refunded to the petitioner, has become recoverable in view of the validation clause. However, it was mentioned in the notice that before the demand is enforced, an opportunity was given to show cause whatever submission the dealer wanted to make. The dealer was also given option to produce account books to substantiate his contentions and was also offered opportunity of being heard personally. To the show cause notice, the petitioner filed reply stating therein that 90% of the rice manufactured by it were supplied to the FCI and other government agencies and whatever refund of market fee was given to the petitioner, the same was, in turn, given to the agencies to whom the petitioner had supplied rice and from whom the market fee had earlier been realised. Thereafter, notice for recovery of the amount due was issued to the petitioner. The petitioner has placed on record a notice dated 18.12.1987, but a perusal thereof shows that prior to that also, the notice had been issued.

In reply, the stand of the respondents is that identical petitions having

been dismissed by this Court, the petitioners do not deserve any relief and furthermore, in any case, the petitioners can avail of alternative remedies available to them under the Act.

Similar issues have been gone into by this Court in C.W.P. No.6562 of 1986 –Mahavir Dall and General Mills v. State of Haryana and others, decided on 4.8.1987, against which the dealers had preferred L.P.A. No.420 of 1987 – Mahavir Dall and General Mills v. State of Haryana and others, which was dismissed on 27.11.1989, wherein this Court relegated the petitioners therein to avail of alternative remedy available to them under the Act.

Reliance on order dated 29.7.1987, passed by this Court in C.W.P No. 5137 of 1986- Umrao Singh Har Parshad v. State of Haryana and others, is misplaced as the order in that case was passed with the consent of learned counsel for the parties, which has no bearing in the present case. Accordingly, the same cannot be treated to be a binding precedent.

For the reasons stated in C.W.P. No.6562 of 1986 – Mahavir Dall and General Mills v. State of Haryana and others, as upheld by this Court in L.P.A. No.420 of 1987 – Mahavir Dall and General Mills v. State of Haryana and others, the writ petitions are disposed of in same terms.

(Rajesh Bindal)
Judge

28.10.2006
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